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May 15, 2008

VIA FEDEX

The Honorable Anne K. Quinlan, Esq  
Acting Secretary  
Surface Transportation Board  
395 E Street, S W.  
Washington, D C 20024

222382

Re Finance Docket No. 34943, Beaufort Railroad  
Company, Inc - Modified Rail Certificate

Dear Ms. Quinlan

Enclosed please find an original and ten (10) copies of a  
Response to Reply in Opposition to Petition for Reconsideration to  
be filed in the above-referenced docket, along with a \$200 filing  
fee

If you have any questions regarding the enclosed, please  
contact me at the telephone number listed above.

Respectfully submitted,

*John L. Richardson*

John L. Richardson  
Attorney for Petitioners

Enclosures

cc Derek F Dean, Esq  
Warren L. Dean, Jr., Esq.  
Thomas Sean McGowan, Esq.  
Thomas F McFarland, Esq.

ENTERED  
Office of Proceedings

MAY 16, 2008

Part of  
Public Record

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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BEAUFORT RAILROAD COMPANY, )      FINANCE DOCKET  
INC - MODIFIED RAIL CERTIFICATE )      NO 34943

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272387

**RESPONSE TO REPLY IN OPPOSITION  
TO PETITION FOR RECONSIDERATION**

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**ENTERED  
Office of Proceedings**

**MAY 16, 2008**

**Part of  
Public Record**

Attorneys for Petitioners

Dated May 15, 2008

**RESPONSE TO REPLY IN OPPOSITION  
TO PETITION FOR RECONSIDERATION**

This case involves a very important dispute between the Beaufort Parties, which want to retain dominion and control over land they do not own, for reasons that are not clear, and Landowners and others, who want to pursue available remedies to reclaim property they own but have not been able to control for decades. The case cannot be resolved unless and until critical factual disputes are resolved, and it is apparent from the Board's Decision, served on March 19, 2008, Landowners' Petition for Reconsideration, filed on April 8, 2008, and the Beaufort Parties' Reply to that Petition, filed on April 28, 2008, that there is virtually no agreement among the

parties as to the essential facts in this case <sup>1/</sup> It is axiomatic that a legal dispute may not be resolved fairly and completely unless there is an adequate factual basis for the legal decision to be rendered. And it is also clear that, to resolve important factual disputes in this case in a responsible manner, it will be necessary for the Board to have access to probative evidence sworn to by qualified witnesses which is subjected to cross examination. Until that happens, it will be impossible for the Board to exercise its statutory responsibilities responsibly and render a decision that is not arbitrary and capricious.

Following are the major factual disputes which must be resolved

**1        WAS THE DECEMBER 1, 2006 NOTICE FILED WITH THE  
BOARD IN GOOD FAITH WITH THE INTENTION OF RE-  
ESTABLISHING RAIL SERVICE OVER THE LINE?**

Questions surrounding the bona fides of the Notice that led to the institution of this proceeding are among the most important and the least completely resolved. In their initial pleadings, Landowners and other interveners raised these questions directly. Specifically, beginning at page 5 of their Petition, Landowners asked the Board to determine

"whether the Beaufort Parties truly intend to reestablish rail service over the property at issue and whether the instrument they have chosen to reinstitute rail service is in fact ready, willing and able to do so

Other parties to this proceeding have suggested persuasively that the Beaufort Parties' actual purpose is to achieve a goal which has not been disclosed to the Board, and it is obviously very important that the Board test these contentions to assure that the integrity of its processes is maintained. Charges and suspicions raised by other parties are serious in and of themselves. But there is also much in the Beaufort Parties' Notice itself to suggest that the charges and suspicions raised by other parties may have merit and that the Beaufort Parties' real interest may, in

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<sup>1/</sup> It is important here to distinguish between legal and factual disputes. The legal issues have been thoroughly briefed, and the positions of the parties on those issues are clear. But a sound decision on legal issues cannot be made with essential factual disputes ignored or unresolved.

fact, be to deprive Landowners and others of their right to reassert ownership and control over their property

The Coberly Group and its allies have raised serious and substantial factual and legal questions and challenges to which the Beaufort Parties must respond and the Board must resolve before the Beaufort Parties' Notice may properly be considered. And the Beaufort Parties' rejoinder to the arguments and contentions advanced by the Coberly Group itself suggests that the Beaufort Parties' real interests may be something other than the reconstruction of a rail line over which interstate traffic will be transported. In fact, from the Beaufort Parties' Reply, it appears virtually certain that the Beaufort Parties' purpose is not to reestablish rail service over the line but to do something else with property they do not own and never have owned.

Landowners therefore encourage the Board to institute an investigation testing both the jurisdictional foundation for the Beaufort Parties' Notice and its credibility. If, contrary to what Landowners believe, the Board does have jurisdiction to consider the Notice, then the Beaufort Parties must show that they have a genuine interest in reestablishing rail service over the long abandoned line. And, if they have that interest, they must have a credible operating plan which will permit them to do so. The only things readily apparent from the operating plan submitted in support of its Notice are that the Beaufort Parties do not intend to handle traffic moving in interstate commerce and that rail service will only be reestablished over the line if a patron shipper wanting such service agrees to pay the full cost of restoring it. It appears that the purported operator of the line does not intend to spend a penny of its own money to allow the reinstitution of service over the line. While the Beaufort Parties assert that they will pay the cost of clearing and maintaining the right of way -- an assertion that must be subject to question given the current condition of the right of way and the limited funds available to the Beaufort Parties -- all other costs must be borne by the shipper or receiver seeking intrastate rail service over the line. This undertaking is something less than the level of entrepreneurial devotion the Board and its predecessor have expected when an applicant seeks permission to construct a rail line and understandably leads an interested party to wonder if the Beaufort Parties' interests are as they represent in their Notice.

In its Decision, the Board noted that Landowners and others had contended that "the modified certificate was not sought in good faith, but rather, was sought to re-establish the Board's jurisdiction over the line so that the line could be converted to a recreational trail, which Petitioners would oppose." Decision, page 3. The Board concluded, however, without further

discussion or analysis of any of the interveners' contentions, "that the modified certificate process here is not being used improperly " Decision, page 4

The Beaufort Parties have studiously avoided responding to the questions the interveners have raised regarding the credibility of the Notice. Although the Beaufort Parties have changed their position on their interest in engaging in interstate rail transportation,<sup>2'</sup> they have never explained the change of position, and they have offered nothing to dispel the thought that their first statement was the most nearly accurate. Neither have they provided direct answers to any of the many other questions interveners have raised about the Notice.

In their latest pleading, the Beaufort Parties assert that they have "rebutted" all suggestions interveners have asserted regarding the bona fides of their Notice. That statement is not accurate. The Board's regulations stipulate what is to be included in a Notice, and the Notice the Beaufort Parties filed falls far short of that standard. For example, where is the "sufficient information to establish the financial responsibility of the operator"? What are the "exact dates of the period of operation which have been agreed upon by the operator and the State"? How is the operator going to provide service over the line? What is its operating plan? Who has been employed to conduct and oversee the operation? What is the nature and extent of the liability insurance coverage the operator has procured? Where are the tariffs that describe the applicable rates, charges and conditions the operator intends to assess on shippers? None of these questions has been answered, and reasonable suspicions regarding the bona fides of the Notice that arise from the absence of answers to those questions have never been "rebutted" or even addressed.

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<sup>2'</sup> Most noteworthy is BRC's stunning pivot regarding the intention of the new railroad to engage in interstate rail transportation. First, BRC stated unequivocally that it would not engage in interstate transportation only to reverse itself completely apparently to avoid being ousted from any hope of Board oversight under Subpart C.

Most explicitly, and most easily provided, where is the sworn statement from a representative of the Beaufort Parties representing that the Notice was filed in good faith with the sole intention of permitting the State of South Carolina to reinstitute freight rail service over the line? Surely, it would not have been difficult for the Beaufort Parties to have produced such a simple statement for the record to, at least, begin to overcome the negative implications aroused by their inadequate and ambiguous Notice

One searches in vain for answers to these basic questions, but until those answers are provided in the proper form and context, suspicions about the bone fides of the Notice will remain. And, at this stage, those answers may only be given credibility if they are presented through the sort of investigation Landowners seek

**2. WAS THE 2003 NOTICE FILED BY TANGENT A NOTICE OF TERMINATION OR A NOTICE OF INTENT TO DISCONTINUE SERVICE TEMPORARILY?**

Landowners and other interveners have argued that upon the effectiveness of the Notice filed by Tangent in 2003, the Board's jurisdiction over the line ended. That argument was based on the plain language of Subpart C of Part 1150 and decisions interpreting the Subpart C process. Subpart C is clearly intended to provide a mechanism whereby rail operations over lines abandoned by railroads and sold to States may be conducted. Its second but equally important purpose is to permit those operations to cease and to terminate the Board's jurisdiction over the property. In these circumstances, it is certain that there must be some act that would trigger the termination of the Board's jurisdiction over a line being operated under and pursuant to Subpart C. Landowners and other interveners contend that that act is the filing of a Notice of Termination.

The Beaufort Parties challenge this self-evident conclusion first by advancing the remarkable factual statement that the Notice Tangent filed in 2003 was not a Notice of Termination but a notice of temporary discontinuance of service. This contention is easily dismissed. First, Subpart C, under which the Notice was filed, does not provide for the filing of notices of temporary discontinuance of service. Second, under the Board's regulatory framework, there does not appear to be any reason for the filing of such a notice. Third, the Beaufort Parties' contention is at odds with the explicit language of the Notice itself. Attached as Exhibit A is a copy of the Notice. It is perfectly clear, based on the language of the Notice and the reliance on Section 1150.24 of Subpart C, that the Notice may not fairly be characterized as anything other than a Notice of Termination.

The only way the Beaufort Parties could have any hope of changing the character of their Notice is to present a sworn witness to testify to that effect and to explain why the Beaufort Parties determined to file the notice they filed. In the absence of such sworn testimony, subjected to cross examination in the fact-gathering investigation Landowners seek, the Notice may not be accepted for anything other than what it declares itself to be.

**3. WAS TANGENT'S NOTICE OF TERMINATION FILED BY TANGENT AS A FREE AND INDEPENDENT AGENT OF THE STATE OF SOUTH CAROLINA, THE OWNER OF THE LINE, OR BY TANGENT ON BEHALF OF ITSELF AND THE STATE OF SOUTH CAROLINA?**

The State argues next that even if the Notice in Exhibit A was a Notice of Termination, it was a Notice filed by an operator, not an owner as required by Subpart C. Landowners have already shown that, for purposes of Subpart C, Tangent, as described by the Beaufort Parties and



the Board itself, was the State and was fully authorized to file the notice as the operator and the owner of the line <sup>2/</sup>

But now the State seems to be contending that Subpart C must be read as requiring that the termination notice be filed by the agency of the State that was designated by the State to be the owner of the line or a subsidiary of that agency, not the agency designated by the State to be the operator of the line or a subsidiary of that agency. If the Beaufort Parties are to be successful in adding such a gloss to the regulatory definitions set forth in Subpart C, it must have some statutory basis for doing so, and it offers none in its Reply.

Perhaps the State is suggesting that, in filing the Notice, Tangent was some sort of rogue agency of the State acting without the knowledge, consent or authority of the State. Again, if such a contention is to be made, the Beaufort Parties must be required to offer live and documentary evidence to that effect in a public forum and permit intervening parties to cross-examine witnesses the Beaufort Parties offer to sponsor such evidence.

Landowners submit that Tangent was acting as the State of South Carolina -- South Carolina, the owner of the line, and South Carolina, the operator of the line -- when it filed a document entitled a Notice of Termination. Landowners will assume, until contrary evidence is presented, that Tangent acted with the full knowledge and authority of the State when it filed that Notice. Upon the passage of 60 days with no objection from the State, the standards of Subpart C were satisfied and the Board's jurisdiction came to an end.

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<sup>2/</sup> The State's argument with Landowners as to whether Tangent was a wholly-owned subsidiary of the state instrumentality that acquired the line for the State or an instrumentality through which the State operated the line is an exercise in futility. Tangent, SCPRC and SCSPA were all "instrumentalities through which the State can act," and each was able to act as the "state" under the clear language of Subpart C.

If there is an error in this reasoning, it must be fact based, and there must be some evidence to support the State's contention. For example, the Beaufort Parties must offer evidence to show that there were no discussions between or among Tangent, SCSPA, SCPRC and any other agencies of the State in anticipation of the filing. They must show that although BRC certified that a copy of the Notice was served on the State in accordance with Subpart C, none of the State agencies received it or otherwise knew about its contents. And they must explain why state officials permitted a Notice of Termination to be filed with the Board and remained silent while it was pending before the Board for 60 days without commenting on it in any way. Again, that sort of testimony can only be given credibility if it is offered under oath with corroborating documentation and subjected to cross examination. The investigation the Landowners seek is the only way to resolve this quandary.

**4. HAVE THE ACTIONS OF THE STATE OF SOUTH CAROLINA REGARDING THE LINE SINCE 2003 BEEN CONSISTENT WITH AN INTENT TO WITHDRAW THE LINE FROM THE NATIONAL RAIL SYSTEM OR TO TERMINATE SERVICE OVER THE LINE TEMPORARILY?**

The Board decided that it was not able to determine the intent of the State regarding abandonment of the line based exclusively on the Notice of Termination filed by Tangent. Accordingly, it examined the actions of the State since the 2003 Notice was filed and concluded that those actions did not disclose an intent to terminate service and abandon the line.

The Board described its investigation, which was based exclusively on evidence the Beaufort Parties provided to it, as follows:

"In considering the facts here, we find no intent on South Carolina's part to abandon the PRR line following Tangent's termination of service in 2003. To the contrary, South Carolina has not only retained the tracks and ties in place, it has maintained them in a state of readiness for service for several years. South

Carolina has provided details of its efforts to maintain the line since 2003, and its statements are unrebutted by Petitioners or Intervenors. Specifically, South Carolina states that, since 2003, it has inspected the tracks, maintained and repaired cross ties, patched and paved railroad crossings, controlled weeds and brush, and removed and replaced track. South Carolina further indicates that the line is capable of accepting shipper traffic at this time, although some additional expense would be necessary to fully restore active rail service. A party intending to take a line out of the national rail system would not spend the time, effort, and money on the line that South Carolina has invested here. Despite the opportunity to do so on reply, Petitioners and Intervenors have not provided any evidence to rebut South Carolina's statements about its maintenance program. In these circumstances, we find that the line has not been abandoned. Accordingly, any reversionary property rights that may be held by Petitioners, Intervenors, or Clarendon Farms Intervenors have not vested. Rather, the line remains subject to the Board's jurisdiction." Decision, page 7. Footnotes omitted.

As indicated in its Petition for Reconsideration, Landowners dispute each and all of factual conclusions reached by the Board.<sup>±</sup> Moreover, unless and until the Board institutes the type of fact-gathering investigation Landowners have been requesting, it is impossible for the Landowners "to rebut South Carolina's statements about its maintenance program."

But, as shown in the next section, it is apparent from the limited evidence available to Landowners, that the Board's conclusions are not based in fact and that the Beaufort Parties have been irresponsible in permitting the Board to recite the factual findings and adopt the conclusion set forth in the Decision.

##### **5. WHAT HAS BEEN THE CONDITION OF THE LINE SINCE 2003 AND WHAT IS ITS CONDITION NOW?**

As long as the line of railroad remains in the ownership of the State, it is difficult if not impossible for Landowners to enter upon that property, inspect it, have it evaluated by railroad experts and assist in the preparation of an analysis of the property to show that the Board was ill

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<sup>±</sup> Landowners are not aware of the basis for the Board's conclusions regarding "the time, effort, and money" the Board assumes the State "invested" in the line. To Landowners' knowledge, there is no such evidence in the record.

advised to accept South Carolina's statements that, "since 2003, it [the State] has inspected the tracks, maintained and repaired cross ties, patched and paved railroad crossings, controlled weeds and brush, and removed and replaced tracks " Even with the limited knowledge Landowners had, they knew this statement was not accurate, and they were surprised that the Beaufort Parties, which had to have shared Landowners' reaction to the Board's critical conclusion, did not come forward to correct the record in this important respect

But the Beaufort Parties did not come forward In fact, in their Reply to Landowners' Petition for Reconsideration, the Beaufort Parties repeated the Board's erroneous conclusions approvingly And then they added

"In addition, there is nothing about the current state of the Line that would constitute an intent or physical act needed to show that abandonment has occurred To the contrary, as BRC and SCSPA have stated before in their February 2007 Reply, SCSPA performed the necessary maintenance to preserve the railroad including track inspections, cross tie maintenance and repair, patching and paving railroad crossings, chemical weed control, weed and brush cutting and removal, and removal and replacement of track for utility repairs See Reply dated February 6, 2007 at 11 At that time, SCSPA stated that some additional expense would be required to completely restore active service over the Line Id Since BRC's Reply was filed in February 2007, the SCSPA has spent approximately \$30,000 on continued maintenance on the Line All of these facts are a part of the record and remain unrebutted by a showing of any evidence to the contrary As the Board itself observed, a party intent on taking the Line out of the national rail system would not spend the time, effort or money on the line that the SCSPA has invested " Beaufort Parties' Reply, pages 9-10

It should be obvious to all that Landowners and other interveners are constrained from being able to introduce testimony and documents regarding the condition of the line or the State's efforts to maintain the line as an essential part of the interstate rail system How and under what circumstances would Landowners be able to assume such a responsibility? It is clear that such an analysis could only be done if Landowners' request for a fact-gathering investigation were sanctioned by the Board

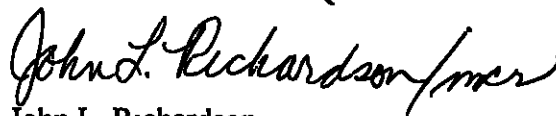
Under the circumstances, however, and in light of the Board's Decision and the Beaufort Parties' Reply to Landowners' Petition for Reconsideration, Landowners concluded that they had to do the best they could to illuminate the record and to dispel the patently false impression the State had permitted the Board to accept regarding the condition of the line and the State's efforts to maintain it in a condition that makes it "capable of accepting shipper traffic at this time " Decision, page 7 (emphasis added)

Attached as Exhibit B is a series of amateur photographs of the line all taken within the last thirty days. While the photographs do not show the entirety of the line (because Landowners do not have access to all of the line), they certainly show enough of it to prove beyond peradventure that the State has not retained the tracks and ties in place, has not maintained the tracks and ties in a state of readiness for service, has not maintained and repaired cross ties, patched and paved railroad crossings, controlled weeds and brush, and removed and replaced track

Landowners believe these photographs, without more, support reconsideration of the essential factual findings the Board announced in its Decision and provide clear evidence that it is and has been the intention of the State to abandon the line. At the very least, if the Board is not to reconsider the factual findings announced in its Decision, these photographs, of admittedly inferior quality and limited scope as a result of Landowners' limited access to the line, fully support the need for the kind of fact-gathering Landowners have been requesting where the line can be inspected by qualified experts and where ballast, ties, plates, spikes and rail conditions can be evaluated, safety of bridges can be determined, weed control efforts can be tested, downed tree removal activities efforts can be examined and, in general, the State's intentions with respect to the line can be measured on the record with sworn testimony from experts subjected to cross examination

Answers to all the factual questions set forth above will determine whether the Beaufort Parties will be able to continue to deprive Landowners and others of their interests in the subject property. And each of these questions raises issues of fact that can only be resolved fairly through an investigation such as the one the Landowners have been urging the Board to undertake since they first intervened in this proceeding. The present record is clearly inadequate to permit the Board to adopt factual findings that must underpin the critical legal conclusions it must reach. This is not a situation where the parties are only in disagreement on legal questions, here, the parties have completely different views on the underlying facts critical to the determination of the essential legal issues. And here, only one side to the dispute, has the ability to provide answers to the critical factual questions. Landowners should not be criticized by the State for their inability to provide best evidence regarding the line and the States stewardship of it, the State should help its citizens and the Board reach sound conclusions on these important factual matters. Accordingly, in order to be fair to all parties, a fact-finding investigation thoroughly exploring these and other important factual questions with live witnesses with first-hand knowledge of all relevant facts is essential. There being no apparent reason why such an investigation should not be undertaken, Landowners urge the Board to institute it immediately.

Respectfully submitted,

A handwritten signature in cursive script that reads "John L. Richardson /mer".

John L. Richardson  
John L. Richardson, P L L C  
555 13<sup>th</sup> Street, N W , Suite 420 West  
Washington, D C 20004

Dated May 15, 2008

Attorney for Petitioners

**Exhibit A**

LAW OFFICES OF

## SIMONS & KEAVENY

147 WAPPOO CREEK DRIVE • SUITE 604 • CHARLESTON, SC 29412

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October 1, 2003

FD-30655

Surface Transportation Board  
1925 K Street, NW  
Washington, D C 20423

The Honorable Mark Sanford  
Governor's Office  
PO Box 11829  
Columbia, SC 29211

Secretary of Commerce Bob Faith  
S C Department of Commerce  
1201 Main Street, Suite 1600  
PO Box 927  
Columbia, SC 29202

Executive Director Gary E. Walsh  
S C Public Service Commission  
101 Executive Ctr Dr, Suite 100  
PO Drawer 11649  
Columbia, SC 29211

Bernard S. Groseclose, Jr  
President & Chief Executive Officer  
S C State Ports Authority  
PO Box 22287  
Charleston, SC 29413

Executive Director Elizabeth S. Mabry  
S C Department of Transportation  
955 Park Street  
PO Box 191  
Columbia, SC 29202

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October 1, 2003  
Page 2

Mr Fred Dennin  
Regional Administrator  
Federal Railroad Administration  
Sam Nunn Atlanta Federal Center  
Suite 16T20  
61 Forsyth Street, S W  
Atlanta, GA 30303-3104



RE *Port Royal Railroad*

To Whom It May Concern

Please be advised that this firm represents the South Carolina Division of Public Railways and its subsidiary Tangent Transportation Company, Inc ("Tangent") Tangent operates the Port Royal Railroad in Beaufort County, South Carolina pursuant to a Modified Rail Certificate issued by the Interstate Commerce Commission (Finance Docket No 30655) on June 7, 1985 A copy of Finance Docket No 30655 is attached hereto and incorporated by reference herein This line is owned by the South Carolina State Ports Authority

In accordance with 49 CFR Section 1150.24, this correspondence is intended to serve as Tangent's Notice of Intent to terminate service over the line known as the Port Royal Railroad sixty (60) days from the date noted above Based thereon, service over the Port Royal Railroad line will cease on November 30, 2003

With best regards, I am

Yours very truly,

  
Derek F. Dean

DFD/  
Enclosure

cc Mr Dan Green (via facsimile only w/enc )

Mr Carlos Gonzalez (w/enc )  
Operations Manager  
Port Royal Cement Company, LLC  
601-A Paris Avenue  
Port Royal, SC 29935

Mr Kent Hollonbeck (w/enc )  
Transportation Manager  
Hydro Agri North America Inc  
100 North Tampa Street  
Suite 3200  
Tampa, FL 33611

PR-7035-01  
DO

INTERSTATE COMMERCE COMMISSION

Finance Docket No. 30655

TANGENT TRANSPORTATION COMPANY

Modified Rail Certificate

SERVICE DATE

JUN 13 1985

June 7, 1985

NOTICE

On April 16, 1985 as amended June 4, 1985, a notice was filed by Tangent Transportation Company (Tangent), for a modified rail certificate of public convenience and necessity under 49 C.F.R. 1150, Subpart C to operate a line of trackage from Yemassee (MP 343.26) to Port Royal (MP 468.31) in Beaufort County, SC. This line of railroad had formerly been owned and operated by Seaboard System Railroad, Inc. (SSR). In Docket No. AB-55 (Sub-No. 110), served August 23, 1984, the Commission authorized SSR to abandon this line.

The South Carolina State Ports Authority, a political subdivision of the State of South Carolina, has acquired the line and has leased the line to the South Carolina Public Railways Commission (Commission). Tangent, a wholly-owned subsidiary of the Commission, will operate the line, beginning May 1, 1985. The railroad will be known as the Port Royal Railroad and will connect with SSR at Yemassee.

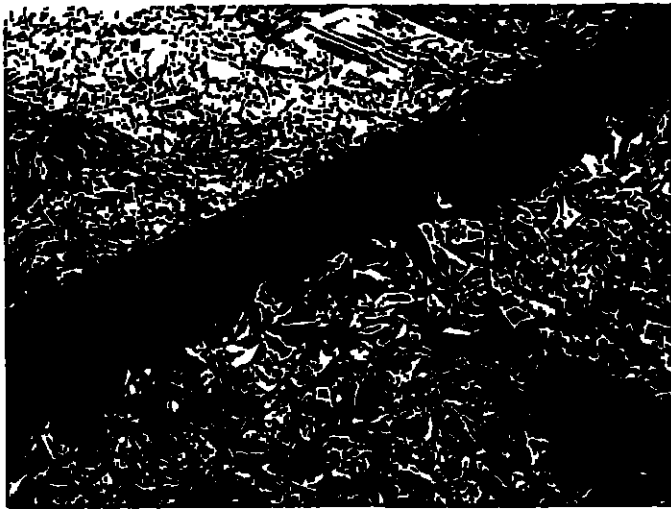
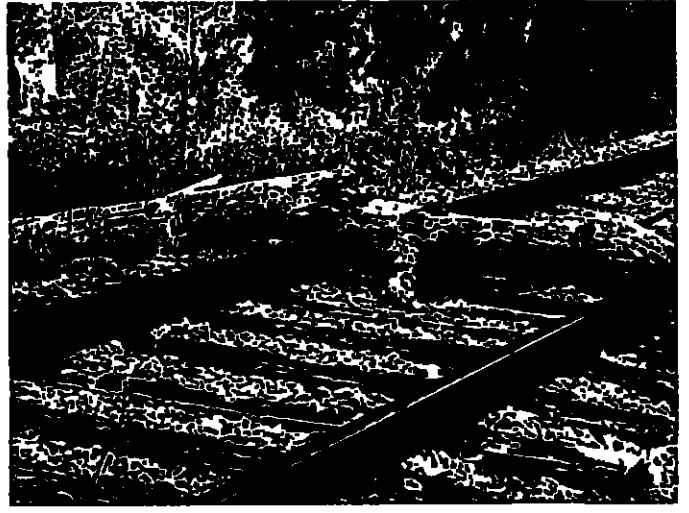
This notice will be served upon the Association of American Railroads (Car Service Division) as agent of all railroads subscribing to the car-service and car-hire agreements, and upon the American Short Line Railroad Association.

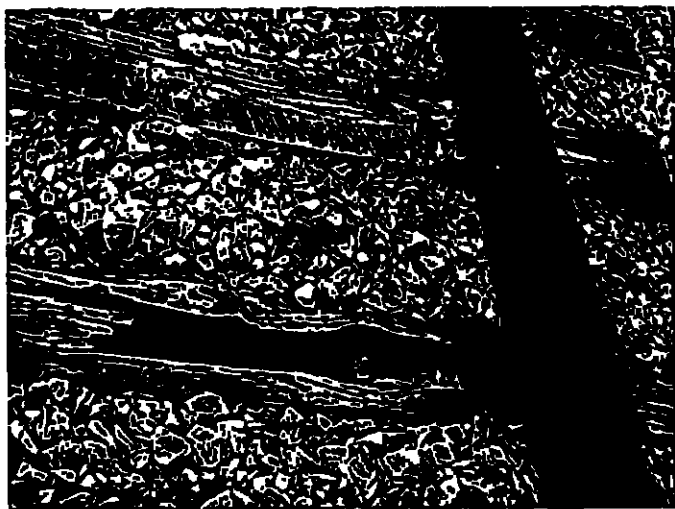
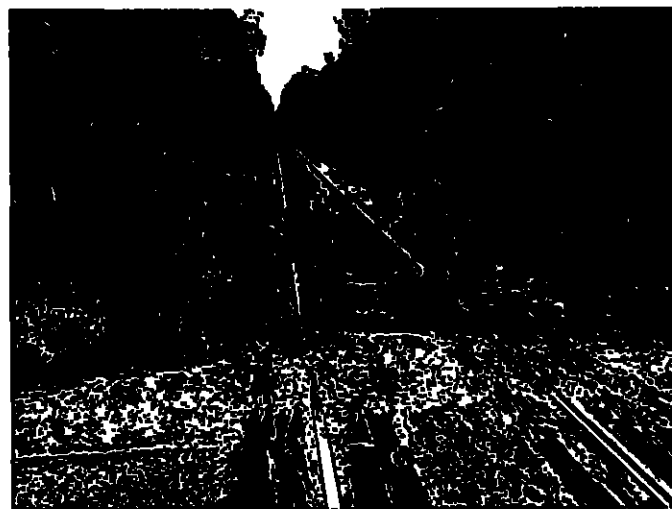
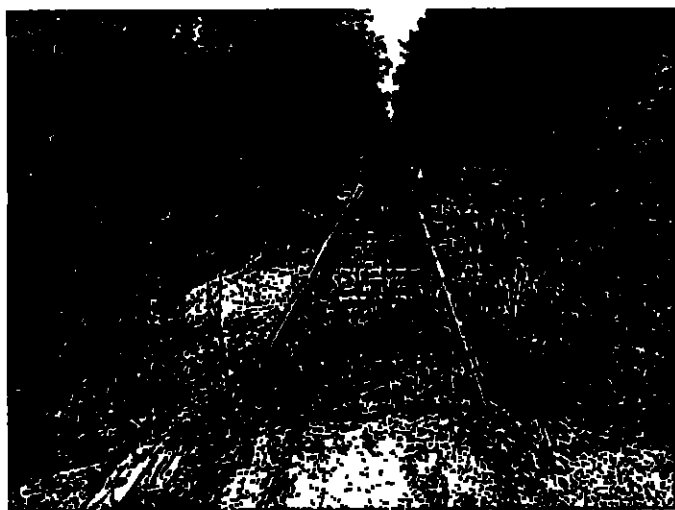
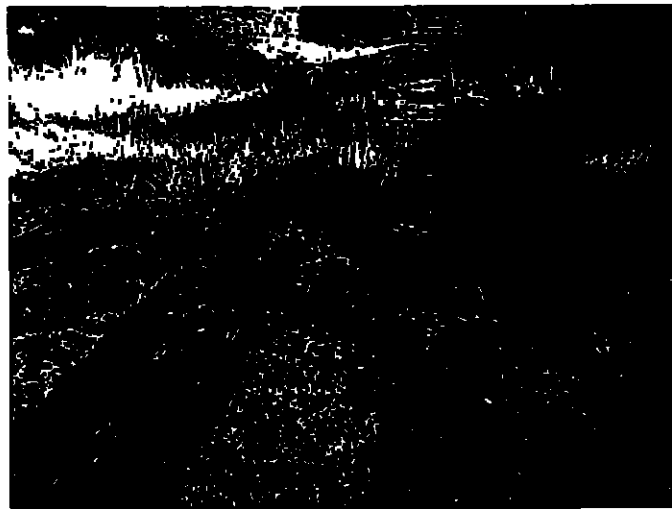
By the Commission, Hubert F. Hardy, Director, Office of Proceedings.

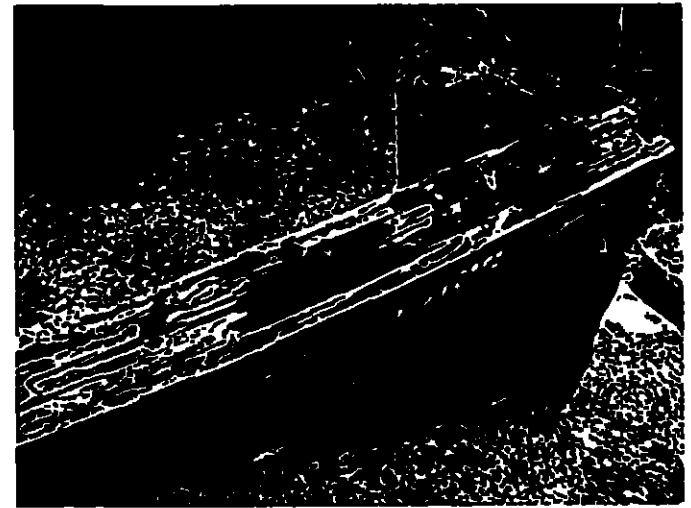
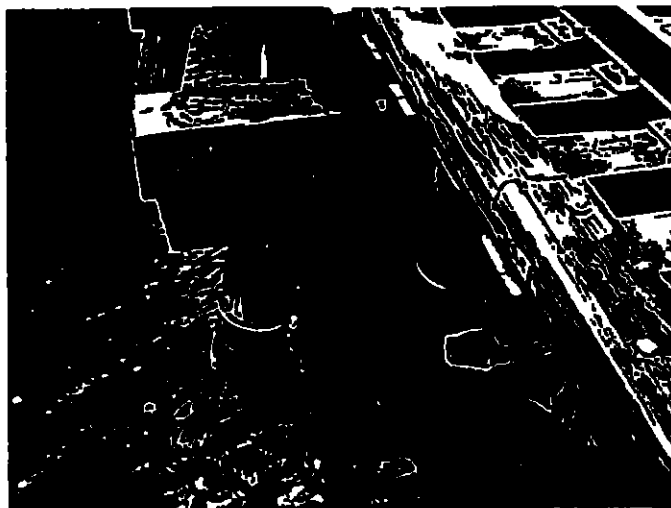
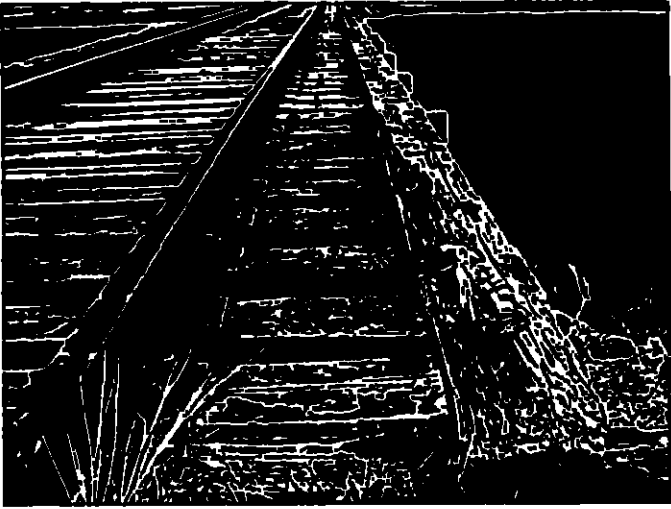
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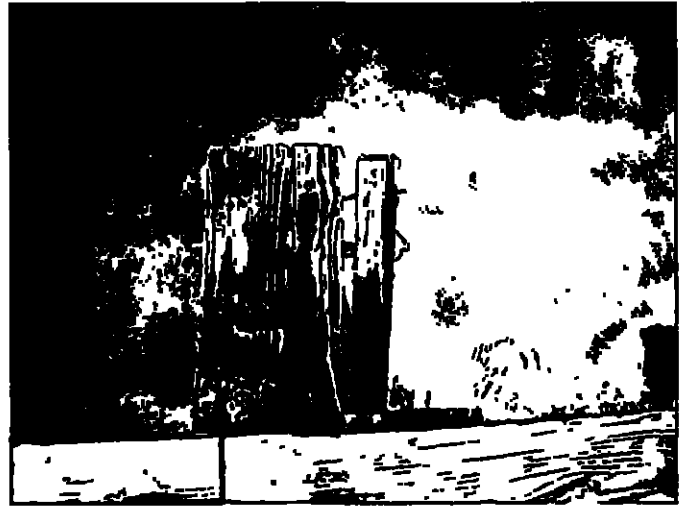
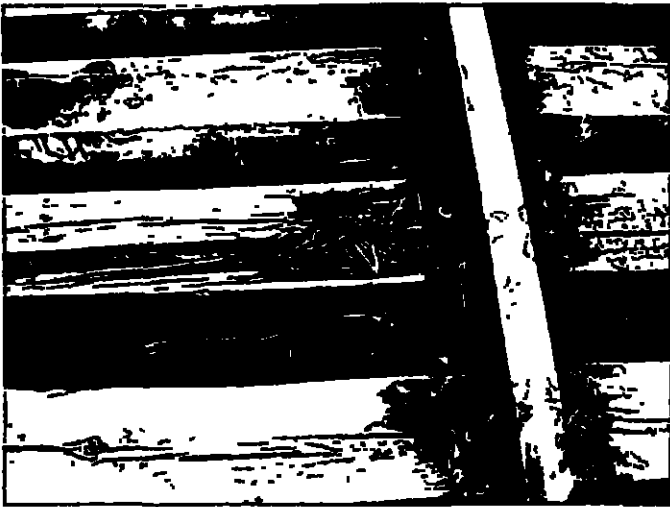
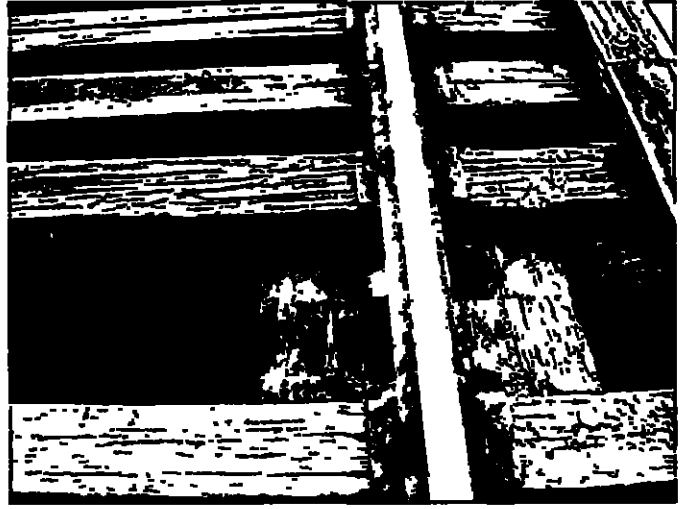
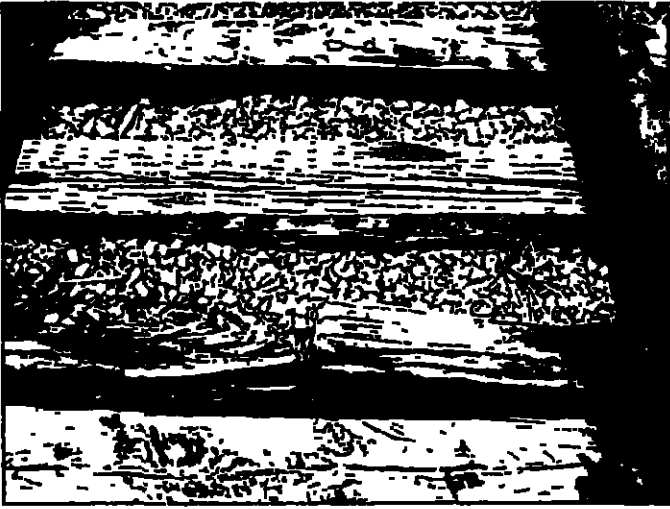
*James V. Bayne*  
James V. Bayne  
Secretary

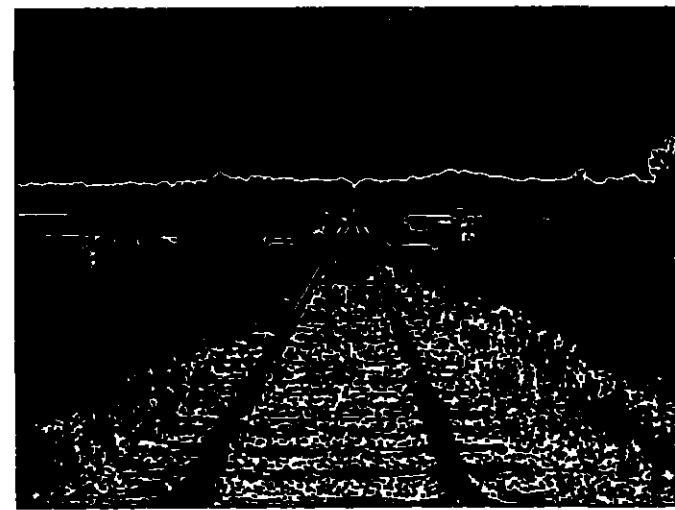
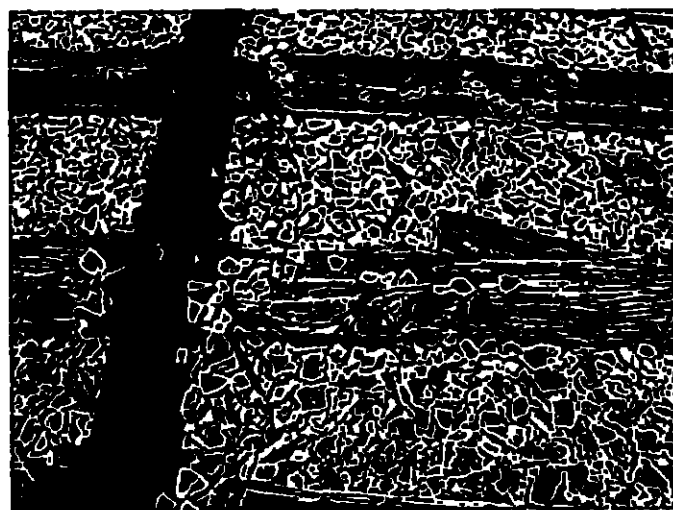
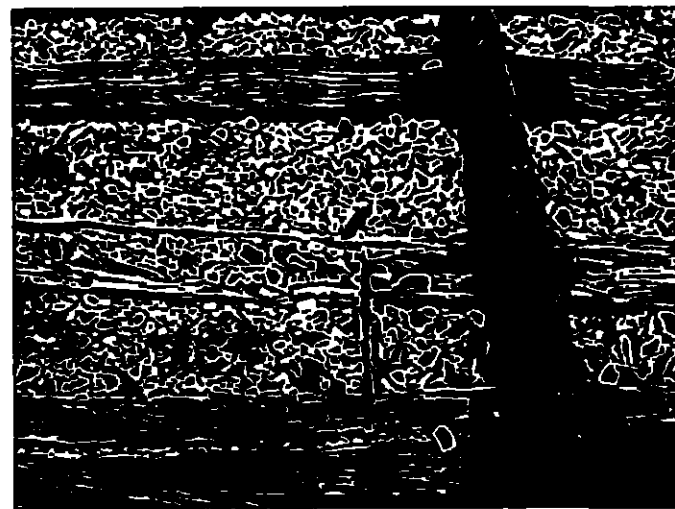
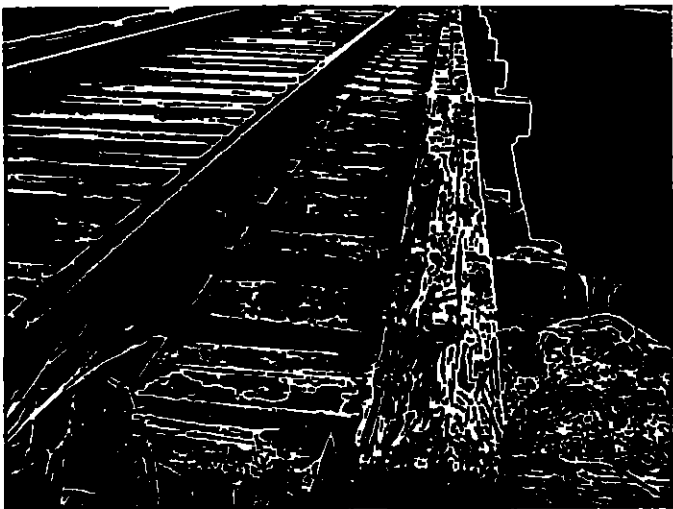
**Exhibit B**



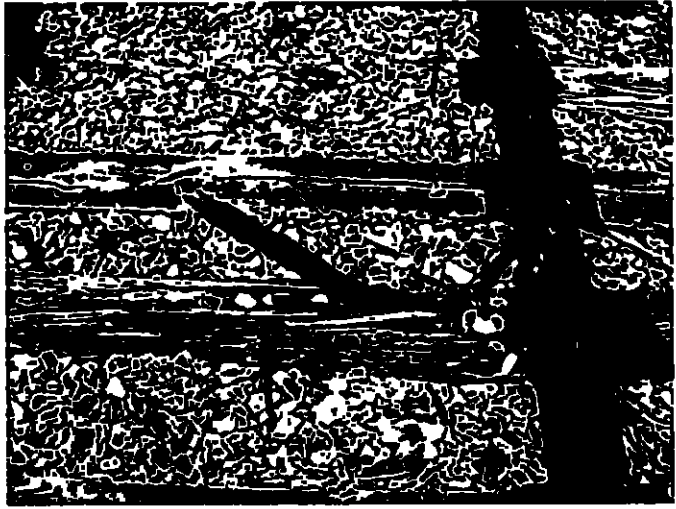












**CERTIFICATE OF SERVICE**

I hereby certify that, on May 15, 2008, I caused a copy of the foregoing document to be served upon the following persons by electronic mail

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